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Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 43, Original

STATE OF OREGON,

Plaintiff,

v.

JOHN N. MITCHELL, Attorney General of the United States,

Defendant.

MOTION FOR LEAVE TO FILE COMPLAINT, COMPLAINT, MOTION TO EXPEDITE AND BRIEFS IN SUPPORT OF MOTIONS

LEE JOHNSON
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JACOB B. TANZER
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In the Supreme Court of the United States

OCTOBER TERM, 1970

No. ....., Original

STATE OF OREGON,

Plaintiff,

v.

JOHN N. MITCHELL, Attorney General of the United States,

Defendant.

MOTION FOR LEAVE TO FILE COMPLAINT

The State of Oregon, by its Attorney General, respectfully asks leave of the Court to file the Complaint which is submitted herewith.

LEE JOHNSON
Attorney General of Oregon

JACOB B. TANZER
Solicitor General of Oregon

DIARMUID F. O'SCANNLAIN
Deputy Attorney General

AL J. LAUE
Assistant Attorney General

August, 1970

In the Supreme Court of the United States

OCTOBER TERM, 1970

No. ....., Original

STATE OF OREGON,

Plaintiff,

v.

JOHN N. MITCHELL, Attorney General of the United States,

Defendant.

COMPLAINT

The State of Oregon, by its Attorney General, brings this action against the defendant and for its cause of action states:

I.

This court has jurisdiction over this original action under Article III, Section 2, of the Constitution of the United States, and 28 U. S. Code, Section 1251 (b)(3).

II.

The State of Oregon was admitted into the Union under the act of February 14, 1859, 11 Stat. 383, and is a Sovereign State of the United States of America.

III.

The defendant is a resident and citizen of a State other than the plaintiff and is presently serving as the Attorney General of the United States.

IV.

The Congress of the United States enacted, and the President of the United States approved, on June 22, 1970, the "Voting Rights Act Amendments of 1970", Public Law 91–285, 91st Congress, H. R. 4249, (hereinafter referred to as the "Act") pertinent portions of which read:

* * *

"Sec. 301. (a) The Congress finds and declares that the imposition and application of the requirement that a citizen be twenty-one years of age as a precondition to voting in any primary or in any election—

"(1) denies and abridges the inherent constitutional rights of citizens eighteen years of age but not yet twenty-one years of age to vote—a particularly unfair treatment of such citizens in view of the national defense responsibilities imposed upon such citizens;

"(2) has the effect of denying to citizens eighteen years of age but not yet twenty-one years of age the due process and equal protection of the laws that are guaranteed to them under the fourteenth amendment of the Constitution; and

"(3) does not bear a reasonable relationship to any compelling State interest.

"(b) In order to secure the constitutional rights set forth in subsection (a), the Congress declares that it is necessary to prohibit the denial of the right to vote to citizens of the United States eighteen years of age or over.

"PROHIBITION

"Sec. 302. Except as required by the Constitution, no citizen of the United States who is otherwise qualified to vote in any State or political subdivision

in any primary or in any election shall be denied the right to vote in any such primary or election on account of age if such citizen is eighteen years of age or older."

V

The Constitution of the State of Oregon, approved by the vote of the people of Oregon Territory on November 9, 1857, and effective from February 14, 1859, to the present, provides in Article II, Section 2, Subsection (1) that:

"Every citizen of the United States is entitled to vote in all elections not otherwise provided for by this Constitution if such citizen:

"(a) Is 21 years of age or older;

"* * * * *"

This constitutional classification is a reasonable means to effect legitimate state purposes, and has never been applied or enforced by the plaintiff in any discriminatory manner in violation of the United States Constitution.

VI.

This action is brought by the plaintiff as a Sovereign *parens patriae* to preserve and maintain fair and reasonable registration and voter qualifications to the end of obtaining the most capable government for all of the plaintiff's inhabitants.

VII.

The Act is unconstitutional in that it violates the Tenth Amendment of the Constitution of the United States, it is not appropriate legislation to enforce the

Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, it is not plainly adapted to that end and it is inconsistent with the letter and spirit of that Constitution.

VIII.

The Office of the Secretary of State and the county clerks of the plaintiff are charged with the registration of qualified voters within the plaintiff's boundaries and would be put to considerable expense to accomplish the requirements of the Act.

IX.

By the terms of the Act the defendant is authorized and directed to enforce the Act and has indicated by letter to plaintiff's Governor that if plaintiff does not conform to the Act he intends to take action.

X.

Municipalities and political subdivisions of the plaintiff are anticipated to hold elections on matters of budget and financing in the early months of 1971. The fiscal stability of these subdivisions is dependent upon a speedy resolution of the constitutionality of the Act.

WHEREFORE, Plaintiff prays:

1. That a decree be entered judging the Act, particularly Title III, sections 301 and 302 thereof, in violation of the Constitution of the United States as drawn and applied to Plaintiff, its political subdivisions, officials and inhabitants.

2. That a decree be entered permanently enjoining

and prohibiting the Defendant from enforcing or attempting to enforce the Act, particularly Title III, Sections 301 and 302 with respect to the Plaintiff, its political subdivisions, officials and inhabitants.

3. For such other and further relief as this Court may deem proper and necessary.

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August, 1970

In the Supreme Court of the United States

OCTOBER TERM, 1970

No. ....., Original

STATE OF OREGON,

Plaintiff,

v.

JOHN N. MITCHELL, Attorney General of the United States,

Defendant.

BRIEF IN SUPPORT OF MOTION FOR LEAVE TO FILE COMPLAINT

LEE JOHNSON
Attorney General of Oregon

JACOB B. TANZER
Solicitor General of Oregon

DIARMUID F. O'SCANNLAIN
Deputy Attorney General

AL J. LAUE
Assistant Attorney General

JURISDICTION

The original jurisdiction of the Court is invoked by authority of Article III, Section 2, of the Constitution of the United States and 28 U.S.C., Section 1251 (b)(3).

STATEMENT

The complaint which the plaintiff requests leave to file tests the constitutionality of the Voting Rights Act Amendments of 1970, Public Law 91-285, H. R. 4249, herein referred to as the Act. Plaintiff, the State of Oregon, requests a declaration that portions of the Act are unconstitutional and that the defendant, Attorney General of the United States, be permanently enjoined from enforcing the Act.

ARGUMENT

I. THE ORIGINAL JURISDICTION OF THE COURT IS PROPERLY INVOKED.

The Court considered original jurisdiction proper in *South Carolina v. Katzenbach*, 383 US 301, 15 L ed 2d 769, 86 S Ct 803 (1966). The complaint therein contained more elaborate allegations which are substantially similar if not identical, to the allegations herein. The parties there, as here, were one of the United States as plaintiff and the then Attorney General of the United States as defendant. The Motion for Leave to File a "bill of complaint" was granted by the court in *South Carolina v. Katzenbach*, 382 US 898 (1965).

In its opinion on the merits the court stated:

"Original jurisdiction is founded on the pre[illegible] of

> a controversy between a State and a citizen of another State under Art III, § 2 of the Constitution. See Georgia v. Pennsylvania R. Co., 324 US 439, 89 L ed 1051, yt S Ct 617." *South Carolina v. Katzenbach*, supra, 383 US at 307.

The court apparently considered that this was a proper case wherein the state might intervene by suit to protect its citizens against enforcement of an allegedly unconstitutional act of Congress, as indicated by dictum in *Massachusetts v. Mellon*, 262 US 447, 67 L ed 1078, 43 S Ct 597 (1922).

It is evident that Congress also felt that original jurisdiction in this court was a proper and appropriate method of determining the constitutionality of the Act as the test in *South Carolina v. Katzenbach*, supra, was specifically referred to in the Senate Judiciary Committee hearings.

The Court's exercise of original jurisdiction in this case will not involve it in difficult problems of enforcement. The constitutional declaration would complete the Court's function and there is no liklihood that the defendant would disobey the injunction if granted.

The issues here being, in a sense, a continuation of those presented in *South Carolina v. Katzenbach*, supra, and of equal if not greater urgency and importance, it follows that the considerations which led this Court to take jurisdiction of that case as an original suit are fully applicable here.

II. THE SIGNIFICANCE OF THE CONFLICT MERITS CONSIDERATION BY THE COURT.

The Act is in direct conflict with the constitutional provisions of the Plaintiff. This conflict must be resolved to determine the validity of imminent elections within the State of Oregon. Bond ssues authorized by elections after January 1, 1971, will not be certified as to conformity with election requirements whether 18 year olds are permitted to vote or not. A substantial portion of municipal and other necessary capital improvements are dependent upon that means of financing.①

The cost of registration of those enfranchised by the Act will be substantial and good fiscal management would forbid such an investment prior to a final determination of the constitutionality of the requirement.

Finally there is substantial and reasonable doubt as to the power of Congress to implement the Fourteenth Amendment in this manner.

> "* * * [T]he draftsmen sought to grant to Congress by a specific provision applicable to the Fourteenth Amendment, the same broad powers expressed in the Necessary and Proper Clause, Art I, § 8, cl 18. The classic formulation by Chief Justice Marshall in McCulloch v. Maryland, 4 Wheat 316, 421, 4 L ed 479, 605. 'Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistant with the letter and spirit of the constitution, are constitutional." *Katzenbach v. Morgan*, 384 US 641, 650, 16 L ed 2d 628, 86 S Ct 1717.

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① It is conservatively estimated that there will be in excess of 400 budget elections within political subdivisions of Oregon between January 1 and July 1, 1971.

There is serious doubt whether the provisions of the act challenged here are within the confines of that test.

The disposition of constitutional issue presented by this Court is called for by the foregoing reasons.

CONCLUSION

For the reasons stated, the motion for leave to file the complaint should be granted.

Respectfully submitted,

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OCTOBER TERM, 1970

No. ....., Original

STATE OF OREGON,

Plaintiff,

v.

JOHN N. MITCHELL, Attorney General of the United States,

Defendant.

MOTION FOR LEAVE TO EXPEDITE

LEE JOHNSON
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Deputy Attorney General

AL J. LAUE
Assistant Attorney General

The State of Oregon by its Attorney General requests the Court to accelerate these proceedings as follows:

(1) Upon the allowance of the Motion for Leave to File the Complaint the defendant be required to Answer or otherwise respond to the Complaint within fifteen days.

(2) The plaintiff be required to file its Brief on the merits thirty days after the defendant's response.

(3) The defendant be required to file his brief on the merits fifteen days after the filing of the plaintiff's brief.

(4) Oral argument be set by the Court at such time as the Court may direct subsequent to the filing of defendant's brief.

Respectfully submitted,

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August, 1970

In the Supreme Court of the United States

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No. ....., Original

STATE OF OREGON,

Plaintiff,

v.

JOHN N. MITCHELL, Attorney General of the United States,

Defendant.

BRIEF IN SUPPORT OF MOTION TO EXPEDITE

LEE JOHNSON
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The similarity of issues and importance of the matters considered by the Court in *South Carolina v. Katzenbach*, 383 US 301, 15 L ed 2d 769, 86 S Ct 803 (1966) referred to in Plaintiff's Brief in Support of the Motion for Leave to File the Complaint herein make this motion equally apposite. The imminence of the effective date of the Act, January 1, 1971, coupled with the substantial constitutional questions raised by this confrontation support the granting of this motion.

The time schedule requested has been modeled on that granted in *South Carolina v. Katzenbach*, supra. It would afford adequate time for full preparation and obviate any requirement that the Court convene in extraordinary session for oral argument.

Respectfully submitted,

LEE JOHNSON
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August, 1970